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**CITY OF NEWPORT NEWS  
MUNICIPAL SEPARATE STORM  
SEWER SYSTEM (MS4)  
PROGRAM REVIEW**

**NEWPORT NEWS  
DEPARTMENT OF ENGINEERING  
2400 WASHINGTON AVENUE  
NEWPORT NEWS, VA 23607**

**March 2011**

**(Inspection Date: June 14 through June 15, 2010)**

**Office of Compliance and Enforcement  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460**

**U.S. Environmental Protection Agency, Region III  
Water Protection Division  
Office of NPDES Enforcement (3WP42)  
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## EXECUTIVE SUMMARY

### Municipal Separate Storm Sewer System (MS4) Inspection Report Newport News, Virginia

From June 14 through June 15, 2010, a compliance inspection team comprising staff from the U.S. Environmental Protection Agency (EPA) Region 3, Virginia Department of Conservation and Recreation (DCR), EPA's contractor, Eastern Research Group, Inc. (ERG), and ERG's subcontractor, PG Environmental, LLC, inspected the City of Newport News, Virginia municipal separate storm sewer system (MS4) program. Discharges from the City's MS4 are regulated by Virginia Pollution Discharge Elimination System (VPDES) Permit Number VA0088641, effective April 10, 2001. The purpose of this inspection was to evaluate compliance with the City's Permit VA0088641, which is included in Attachment 1. The inspection focused on the following sections of the Permit in relation to the City's MS4 program: (1) Part I.A.1.a- Structural and Source Control Measures; (2) Part I.A.1.b- Unauthorized Discharges and Improper Disposal; (3) Part I.A.1.c- Runoff from Industrial and Commercial Facilities; and (4) Part I.A.1.d - Runoff from Construction Sites.

Based on the information obtained and reviewed, the EPA inspection team made several observations concerning the City of Newport News' MS4 program. Table 1 summarizes the permit requirements and the observations noted by the inspection team.

**Table 1. Observations Identified During the Newport News Inspection (6/14/10 – 6/15/10)**

Virginia Permit Number VA0088641 Requirement	Observations
I.A – Stormwater Management Program	Observation 1. The City did not maintain a written description of its current Stormwater Management Program.
I.A.1.a – Structural and Source Control Measures	<p>Observation 2. The City of Newport News had not identified the resources needed to ensure the long term operation of public stormwater management (SWM) facilities.</p> <p>Observation 3. The City of Newport News had not identified the resources needed to ensure the long term operation of private SWM facilities.</p> <p>Observation 4. The City has not pursued corrective actions or enforcement of maintenance agreements of private SWM facilities.</p> <p>Observation 5. The City did not fully enforce its Chesapeake Bay Preservation Act ordinance.</p> <p>Observation 6. The City had not reviewed activities in the City's designated Chesapeake Bay Preservation Areas to ensure compliance with the City's Chesapeake Bay Preservation Ordinance.</p>

**Table 1. Observations Identified During the Newport News Inspection (6/14/10 – 6/15/10)**

<b>Virginia Permit Number VA0088641 Requirement</b>	<b>Observations</b>
I.A.1.b – Unauthorized Discharges and Improper Disposal	<p>Observation 7. The City of Newport News staff were unaware how dry weather screening points were initially identified and whether the set of dry weather screening points had ever been updated.</p> <p>Observation 8. The City of Newport News has not used any formal training, standard operating procedures, or manuals for illicit discharge detection and elimination.</p> <p>Observation 9. The City of Newport News has not completed investigations of all potential illicit discharges identified through dry weather screening and confirming cessation of identified illicit discharges as required by Part I.A.1.b.(3) of the permit.</p>
I.A.1.c – Runoff from Industrial and Commercial Facilities	<p>Observation 10. The City of Newport News has not identified new or previously unidentified facilities with the potential to impact stormwater.</p> <p>Observation 11. The City of Newport News has not conducted industrial and commercial inspections for stormwater purposes as required by Part I.A.1.c of the permit which states the permittee must have “a program to monitor and control pollutants in storm water discharges” from industrial and commercial facilities.</p> <p>Observation 12. The City of Newport News is not effectively prohibiting non-stormwater discharges from the MS4 originating from the City municipal yard as required by Part I.B.4 of the permit.</p>
I.A.1.d – Runoff from Construction Sites	<p>Observation 13. The City of Newport News had not ensured E&amp;S inspections are conducted at the required frequency.</p> <p>Observation 14. The City’s E&amp;S inspectors do not assess potential pollutant sources other than sediment at construction site</p> <p>Observation 15. The City did not have a training program to educate construction site operators.</p>

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## I. INTRODUCTION

From June 14 through June 15, 2010, a compliance inspection team comprising staff from the U.S. Environmental Protection Agency (EPA) Region 3, Virginia Department of Conservation and Recreation (DCR), EPA's contractor, Eastern Research Group, Inc. (ERG), and ERG's subcontractor, PG Environmental, LLC, (hereafter, collectively, EPA inspection team) inspected the City of Newport News, Virginia (hereafter, the City, Newport News or the City of Newport News) municipal separate storm sewer system (MS4) program. Discharges from the City's MS4 are regulated by Virginia Pollution Discharge Elimination System (VPDES) Permit Number VA0088641, effective April 10, 2001. The purpose of this inspection was to obtain information that will assist EPA in assessing the City's compliance with Permit VA0088641, which is included in Attachment 1. The inspection focused on the following sections of the Permit in relation to the City's MS4 program: (1) Part I.A.1.a- Structural and Source Control Measures; (2) Part I.A.1.b - Unauthorized Discharges and Improper Disposal; (3) Part I.A.1.c- Runoff from Industrial and Commercial Facilities; and (4) Part I.A.1.d- Runoff from Construction Sites. The following personnel participated in this inspection:

Newport News Department of Engineering <sup>1</sup> :	Mr. Everett Skipper, Director of Engineering Mr. Brian Lewis, Senior Engineer Mr. Louis Bott, Program Manager, Environmental Management Systems Mr. Richard Harr, Dry Weather Screening Inspector Ms. Susan Kassel, Manager of Development Plan Review Mr. David Kuzma, Engineering Specialist II Mr. Mark Linkenhoker, Conservator of the Peace
Newport News Department of Planning:	Ms. Kathy E James Webb, Manager of Environmental Planning
Newport News Fire Department:	Lt. Stacy Carroll, Assistant Fire Marshall Lt. Lawrence J. Marr, Assistant Fire Marshal Investigator Mr. Keith Allen, Fire Inspector II
Newport News City Attorney's Office:	Mr. Joseph DuRant, Deputy City Attorney I Mr. Collins L. Owen, Deputy City Attorney
EPA Representatives:	Mr. Chuck Schadel, EPA Region 3, Enforcement Officer Ms. Liz Ottinger, EPA Region 3
Virginia DCR Representative:	Mr. Doug Fritz, MS4 Program Manager Mr. Lee Hill Mr. Jeff Selengut
EPA Contractors:	Mr. Mark Briggs, ERG Ms. Kavya Kasturi, ERG Mr. Max Kuker, PG Environmental, LLC

<sup>1</sup> A copy of sign-in sheets containing the names of all City participants in the inspection is included as Attachment 2.

Section II of this report presents background information on Newport News' MS4 program. Section III presents information obtained during the inspection related to the specific permit requirements evaluated

## **II. NEWPORT NEWS BACKGROUND**

The City of Newport News is located in eastern Virginia and is bordered by the City of Hampton, the James River, the Chesapeake Bay, and the Counties of York and James City. According to the U.S. Census Bureau, as of 2006, the City's population was estimated as 178,281 and the City has a total area of 68 square miles.

Newport News' MS4 program is administered by the following departments:

- Department of Engineering;
- Department of Public Works;
- Department of Planning;
- Fire Department;
- Department of Parks, Recreation and Tourism; and
- Newport News Waterworks

## **III. INFORMATION OBTAINED DURING THE INSPECTION REGARDING PERMIT REQUIREMENTS**

The EPA inspection team obtained information to evaluate the City of Newport News' compliance with the requirements of the Permit, under which the City's MS4 is covered. The Permit, included in Attachment 1, has an effective date of 10 April 2001 and an expiration date of 10 April 2006. The EPA inspection team evaluated four permit components; observations regarding the City's implementation of each permit component are presented in the following four subsections. Attachment 3, the Exhibit Log, contains all referenced exhibits, and Attachment 4, the Photograph Log, contains all referenced photographs (additional photographs are available in the inspection record)

### **III.A. Requirement I.A – Stormwater Management Program**

Part I.A of the permit contains requirements for the City to develop, implement, and refine a Stormwater Management Program (SWMP) including pollution prevention measures, management or removal techniques, use of legal authority, and other appropriate means to control the quality and quantity of stormwater discharged from the MS4. The staff responsible for the City's SWMP includes representatives from numerous organizational divisions as described previously in Section II of this report. The EPA inspection team's observations related to this section of the permit are discussed below.

#### **Observation 1. The City did not maintain a written description of its current Stormwater Management Program.**

Part I.A of the permit states that the City "shall continue development, implementation, and, where appropriate, refinement of the Storm Water Management Program including pollution prevention measures, management or removal techniques, use of legal authority, and other appropriate means to control the quality and quantity of storm water discharged from the municipal separate storm sewer system. The Storm Water Management Program shall include controls necessary to effectively prohibit the unauthorized discharge of non-storm water into the municipal separate storm sewer system and reduce the discharge of pollutants to the maximum extent practicable [MEP]. The permittee shall implement, to the maximum extent practicable, the provisions of the Storm Water Management Program required under this Part as a condition of the permit.



All applicable components of the Municipal Separate Storm Sewer System Phase I NPDES Permit Application submitted in accordance with 40 CFR 122.26, and all approved modifications are hereby incorporated by reference into the Storm Water Management Program.”

EPA’s most recent guidance on the MEP standard is found in the preamble to the final Phase II Stormwater Regulations which states “EPA envisions application of the MEP standard as an iterative process. MEP should continually adapt to current conditions and [best management practice] BMP effectiveness and should strive to attain water quality standards” (64 *Federal Register* 68754).

The EPA inspection team formally requested “current Storm Water Management Program document—written description of your current MS4 Programs/Program Areas (e.g., MS4 Program Plan)” (Item 1 in Exhibit 1, Team 2 Records Request). In response to the request, the City provided their *NPDES Stormwater Permit Application, Part I and Part II* (hereafter, Part I and Part II Application) developed in May 1992 and May 1993, respectively, as their current SWMP. However, the EPA inspection team’s review of these documents indicated that they were not reflective of the City’s current Stormwater Management Program. In anticipation of permit reissuance, the City also developed a proposed MS4 Program Plan (May 2006) that is more reflective of current stormwater activities; however, City representatives further stated that since the permit was never reissued they are not using the document and are not bound to its conditions. Therefore, the City does not maintain a centralized planning document that describes how the MEP standard will be achieved, or that collects and references the tools (e.g., procedural manuals, database inventories, inspection forms) that are critical to program execution.

### **III.B. Requirement I.A.1.a – Structural and Source Control Measures**

Part I.A.1.a of the permit contains requirements for the City to utilize structural and source control measures to reduce pollutants in stormwater runoff from commercial and residential areas, which the City addresses through a program herein referred to as its Structural and Source Control Measures Program. Within this program area, the inspection was focused on Parts I.A.1.a(1), (2), and (4) of the permit. State laws such as the Virginia Stormwater Management Law (§ 10603 et seq. of the Virginia Code), the Virginia Stormwater Management Regulations (4VAC320 et seq.), and the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq. of the Virginia Code) provide the underlying regulatory framework for the City’s Structural and Source Control Measures Program.

The City has promulgated the following but not limited to, ordinances pertaining to development and redevelopment:

- Chapter 33.02 - Site Regulations
- Chapter 35 - Soil Removal and Other Land-Disturbing Activities
- Chapter 37.1 - Stormwater Management
- Chapter 42, Article V - Reservoir Protection
- Chapter 44 – Wetlands
- Chapter 45, Article XXXI, Division 2- Floodplain Regulations
- Appendix B - Subdivision Regulations

The City has also developed a design criteria manual. The manual covers topics such as plan submission, design criteria for Stormwater Management (SWM) Facilities (also referred to as best management practices or BMPs), drainage, and stormwater quantity and quality requirements.

Part I.A.1.a of the Permit addresses requirements for the structural and source controls program. Within this program area, the inspection was focused on site plan review, maintenance inspections, and enforcement. The City's SWMP for structural and source control measures is primarily implemented by the Department of Engineering; the inspection team's observations related to this section of the permit are discussed below.

### **III.B.1. Site Plan Review**

Part I.A.1.a(2) of the permit states that the City must "adhere to...all those components of the Storm Water Management Master Plan...pertaining to development and redevelopment." As described above, the City's Stormwater Management Master Plan is entitled the Part I and Part II Permit Applications.

For each proposed commercial, industrial, and multifamily development project, the applicant is required to submit a "Preliminary and Development Plan Application," copies of the site plans, and a "Site Plan Checklist" to the Site and Subdivision Office of the Engineering Department. Site plans for commercial and industrial sites are then disseminated to 12 offices or departments within the City for review, including Public Works, Codes Compliance, Planning, Police, Stormwater Management Services, etc. Stormwater Management Services is responsible for the review of erosion and sediment control and SWM facility requirements. Site plans for single-family homes are submitted to the Department of Codes Compliance. All plans are compared to the City's Chesapeake Bay Preservation (CBP) Area maps and are also routed to the Planning Department if the sites appear to be located within, or partly within the CBP Area.

### **III.B.2. Structural Controls Maintenance Inspections**

The City of Newport News requires that owners of privately owned SWM facilities sign agreements to maintain their SWM facility. The Department of Engineering is responsible for providing the SWM facility maintenance agreement to owners, keeping the agreement on file, and enforcing the agreement. The SWM facility maintenance agreement is a Memorandum of Agreement (MOA) between the City Department of Engineering and the SWM facility owner. The MOA requires the owner to perform routine maintenance and maintain documentation of maintenance.

The City categorizes SWM facilities as commercial structural controls (wet ponds, dry ponds, and other controls) and detention ponds (ponds and lakes receiving public drainage). The City has one SWM facility maintenance inspector within the Department of Engineering. The inspector is responsible for inspecting both public and private commercial structural controls and public and private detention ponds within the City's jurisdiction. According to documentation provided to the EPA inspection team by the City, there are 124 private and 5 public commercial structural controls within the City's jurisdiction (Exhibit 2, Commercial SWM Facility Inventory and Inspections), and 69 lakes and ponds throughout the City that receive public stormwater drainage (Exhibit 3, Public Lakes Inventory). The inspector stated that approximately 20 percent of his time is dedicated to SWM facility inspections while the remainder of his time is dedicated to illicit discharge screening activities and investigations and other duties. Documentation of inspection dates of commercial SWM facilities is maintained in a spreadsheet (Exhibit 2, Commercial SWM Facility Inventory and Inspections). Documentation of detention pond inspections does not appear to be tracked and was not provided by the City.

The five public commercial SWM facilities are:

- Mary Passage Middle School, 15316 Warwick Blvd (Newport News Public Schools)
- Police Headquarters, 9710 Jefferson Ave (City of Newport News)
- Commissioner of Revenue/Treasures satellite office, 12912 Jefferson Ave (City of Newport News)
- Newsome Park Elementary School, 4200 Marshall Ave (Newport News Public Schools)
- Lee Hall Elementary School, 17346 Warwick Blvd (Newport News Public Schools)

**Observation 2. The City of Newport News had not provided long term operation of public SWM facilities.**

Part I.A.1.a(1) of the permit requires that the City “continue with the existing maintenance program for structural controls owned and operated by the permittee.” Further, Part I.B.6 of the permit requires that the City of Newport News “provide adequate finances, staff, equipment, and support capabilities to implement all parts of the Storm Water Management Program required by Part I.A of this permit.”

The General Description portion of Section 7.3.1 of the MS4 Program Plan states that the “City of Newport News will implement a program to regularly inspect City-owned Stormwater Management (SWM) Facilities.” The Schedule of Activities portion of this section indicates that “The City will develop a program for regular inspection of public BMPs, including written SOPs and an inspection checklist” by Year 2 of permit coverage. The Schedule of Activities further states that during Years 3 through 5 of permit coverage, “the City will implement the inspection program, inspecting a minimum of 20 percent of the public BMPs on an annual basis so that all public BMPs are inspected at least once every five years.”

The City did not provide a written SOP or inspection checklist as required by Section 7.3.1 of the MS4 Program Plan. The City did not provide documentation that a minimum of 20 percent of public SWM facilities were inspected annually as required by Section 7.3.1 of the MS4 Program Plan. No documentation was provided by the City regarding the actual conditions of the structural controls or other details regarding inspections.

**Observation 3. The City of Newport News had not provided long term operation of private SWM facilities.**

Section 9.4.4 of the Part II Application states that “during the term of the NPDES permit, the Department of Engineering will implement a regular inspection program for structural BMPs which are privately maintained. The City will gradually increase the number of inspectors over the first three years of the NPDES permit term so that a fully expanded staff (4 additional inspectors) is in place by Year 4 (by April 2005). Some of these additional inspectors will cover construction sites and illicit discharges as well as structural BMPs for future development.”

At the time of the EPA inspection, the City had only one SWM facility maintenance inspector to inspect all public and private SWM facilities and to conduct follow-up and enforcement on those inspections. The SWM facility maintenance inspector is also responsible for other program requirements and estimated that about 20 percent of his time was dedicated to SWM facility inspection related activities. The inspector indicated that in addition to SWM facility inspections, he was responsible for conducting illicit discharge screening activities and investigations, as well as other activities.

The documentation provided by the City indicates that a total of 41 commercial wet ponds, 56 commercial dry ponds, and 32 other commercial SWM facilities (i.e., swales, pipes, filter systems, etc.) have been inspected since 2006 (Exhibit 2, Commercial SWM Facility Inventory and Inspections). However, Exhibit 2 incorrectly indicates the number of inspections actually conducted. Specifically, the number of inspections reported represents the number of commercial SWM facilities in the inventory not the actual number inspected. The documentation consists of a table which includes the dates of inspections, compliance status, dates Non-Compliance letters were issued, and follow-up actions for each SWM facility. No documentation was provided regarding the actual conditions of the structural controls. Based upon information in Exhibit 2, the majority of the initial inspections were conducted in 2006 (62 of the 129) with a decreased number of initial inspections conducted over the following years (see Table 2).

Additionally, 19 of the SWM facilities on the list have not been inspected since 2006. Exhibit 2 further indicates that 37 of the structural controls are not in compliance and that the compliance status of 9 of the structural controls is unknown. Also, several of the structural controls listed as not being in compliance at the time of the EPA inspection were issued Non-Compliance Letters by the City as far back as 2006, but there was no indication that any further correspondence had been conducted with the owner regarding the non-compliance.

**Table 2: Summary of the City's Commercial SWM Facility Inspections by Year**

Year	Initial	Follow up	Total
2006	62	3	65
2007	17	8	25
2008	11	5	16
2009	13	6	19
2010	9	1	10
	112	23	135

Exhibit 3 indicates that there are 69 lakes and ponds throughout the City that receive public drainage and are considered SWM facilities. The exhibit indicates whether the lakes and ponds are dry or wet, and if they are public or private. Eleven of the 69 lakes and ponds are publicly owned with the remaining privately owned. No records of inspection or maintenance were provided regarding the 69 lakes and ponds.

**Observation 4. The City had not pursued corrective actions or enforcement of maintenance agreements of private SWM facilities.**

Section 37.1-39 (Maintenance) of the Newport News Code of Ordinances (City Code) specifies that the "responsibility for the operation and maintenance of stormwater management facilities, unless assumed by a governmental agency, shall remain with the property owner and shall pass to any successor or owner." Section 37.1-49 (Enforcement) of the City Code further specifies that "if it is determined that there is a failure to comply with the approved plan, notice shall be served upon the property owner by registered or certified mail to the address specified in the application or plan certification, or by delivery at the land development site to the agent or employee supervising such activities."

Section 9.4.4 of the NPDES Stormwater Permit Application, Part II, states that "structural BMP which are constructed for new development will be privately maintained based upon a maintenance agreement executed at the time the land development project is approved. The City will be responsible for periodic inspection of onsite BMPs to check for compliance with the maintenance agreement. If the City's inspection program indicates that a particular BMP facility is not being adequately maintained, the City can enforce the provisions of the maintenance agreement."

The City has not pursued corrective actions or enforcement for long-term maintenance and repair of SWM facility structural controls and does not intend to pursue it. The City stated that they did not have the authority to inspect private SWM facilities and therefore, they did not actively pursue corrective action or enforce against private SWM facility owners that failed to adequately maintain private SWM facilities. According to the documentation provided (Exhibit 2, Commercial SWM Facility Inventory and Inspections), 37 of the 129 commercial structural controls were out of compliance, and most of these have been out of compliance for several years. For example, the City conducted an inspection of the wet pond at the Macedonia Baptist Church on April 16, 2008 and sent a Non-Compliance letter on May 16, 2008.

During EPA's inspection, the Macedonia Baptist Church was revisited and the EPA inspection team noted the same issues cited in the City's May 2008 non-compliance letter.

The City requires the property owner to sign a SWM Facility Maintenance Agreement at the time of land disturbance, but according to City representatives the agreement is not deeded or recorded with the property and is therefore not enforceable.

During a review of the Macedonia Baptist Church, San Francisco A Condominium Association, and Windy Knolls Development Maintenance MOAs (Exhibits SWM5, 8, and 11, respectively), it was noted that a record of the ownership was not included, and it did not specifically allow City staff to enter the site to inspect the SWM facility for maintenance needs or allow the City to take necessary actions to maintain the facility at the expense of the SWM facility owner if maintenance has been neglected.

**Observation 5.      The City did not enforce its Chesapeake Bay Preservation Act ordinance on two occasions.**

Permit Part I.A.1.d requires the permittee to operate in accordance with, and continue enforcement of, City ordinances, including the Chesapeake Bay Preservation Act Ordinance (Section 37.1.51). City representatives stated that the City does not actively enforce violations of the City's CBPA requirements. For example, according to the City's former CBPA coordinator, on at least two or three separate occasions in the last "couple" of years, residential homeowners have constructed "accessory structures" within the Resource Protection Area (RPA) or Resource Management Area (RMA) without prior site plan submittal and approval, in violation of the set back and reduction of impervious area requirements of the City's CBPA Ordinance. According to the documentation provided by the City (Exhibit 4, List of Chesapeake Bay Preservation Act Cases), there were at least two occurrences in which ordinance violations occurred within the RPA (July 24, 2007 and May 8, 2008). No further details or documentation was provided by the City regarding followup action or enforcement of the two occurrences. The City's former CBPA Coordinator further stated that upon discovery of the violations, the City required the homeowners to appear before the Board of Zoning Appeals; however, the Board subsequently dismissed the violations and allowed the structures to remain with no penalty or other repercussions.

**Observation 6.      The City had not reviewed activities in the City's designated CBPA Areas to ensure compliance with the City's CBPA Ordinance.**

Section 12 (Environment), Goal 6, Strategy 6.1.2 of the City's Framework for the Future 2030 (Comprehensive Plan) (Exhibit 12, Framework for the Future) states that the City will "enforce the Chesapeake Bay Preservation Act by reviewing activities in the City's designated Chesapeake Bay Preservation Areas to ensure compliance with the City's Chesapeake Bay Preservation Ordinance." The City of Newport News has not reviewed activities in the City's designated CBPA Areas to ensure that that SWM facilities used to offset impervious areas, as required by the CBPA ordinance and other City ordinances, are maintained over time. For example, the City is not conducting periodic followup inspections of residential properties that are required to install vegetation in RPA or RMA where vegetation must be installed to offset an increase in impervious space under "Vegetative Maintenance Agreements." The purpose of such inspections would be to ensure that the vegetation has survived, or that the vegetation has not been removed.

### **III.B.3. Structural Controls Site Visits**

On June 14 and 15, 2010, the EPA inspection team conducted four commercial SWM facility site visits; details of the site visits are provided below. All referenced photographs are contained in Attachment 4 Photograph Log. One of the sites visited for the review of SWM facilities was considered an active construction site; however, almost the entire site was stabilized and had a "Temporary Certificate of Occupancy" for portions of the site that were complete.

#### ***Site: Macedonia Baptist Church (5500 Marshall Avenue, Newport News, VA)***

Macedonia Baptist Church consists of one building, a large parking lot, and one wet pond. The wet pond is located in the southwestern corner of the property near the public roadway. The City considers the pond to be a commercial structural control, and it was identified on the City's Commercial Structural Control inspection list/inventory (Exhibit 2, Commercial SWM Facility Inventory and Inspections). The pond was constructed in 2001 and the Structural Control Maintenance MOA was dated September 27, 2001 (Exhibit 5, Macedonia Baptist Church MOA).

Upon arrival at the site, the City SWM facility maintenance inspector indicated that he typically checks the forebay, inlets, outlets, and principal spillway for problems and examines the pond for erosion, woody vegetation, and trash. The site visit began by inspecting the pond inlet and outlet, and the bank of the pond. The City SWM facility inspector and the EPA inspection team then proceeded to inspect the inlets and banks of the second pond which was located adjacent to the construction area. It was noted, during the EPA inspection team's site visit, that the pond inlet needed to be cleaned (Photograph 1), there were animal borrows in the side slope of the pond (Photograph 2), stabilization of side slopes was needed, and the pond outlet structure needed to be repaired or replaced (Photograph 3).

According to the documentation provided by the City, the City last conducted an inspection of the pond on April 16, 2008 (Exhibit 6, Macedonia Baptist Church SWM Facility Inspection Checklist) and sent a Non-Compliance letter on May 16, 2008 (Exhibit 7, Macedonia Baptist Church Non-Compliance Letter), but the site was not in compliance during the EPA inspection team's site visit two years later. The City's SWM facility inspector stated that the items noted during the EPA inspection team site visit were the same issues he had noted during his 2008 inspection.

#### ***Site: San Francisco A Condominium Association (Lester Road, Newport News, VA)***

The San Francisco A Condominium Association owns and operates a wet pond (Photograph 4) in a multi-family dwelling community. The site consists of approximately 10 buildings and a parking lot. An auto repair shop borders the site on the West; however, stormwater from the repair shop does not appear to drain to the pond. The pond is considered by the City to be a commercial structural control and was identified on the City's Commercial Structural Control inspection list/inventory. A Structural Control Maintenance MOA was dated August 19, 2009 (Exhibit 8, San Francisco A Condominium Association MOA).

The site visit began by the City SWM facility inspector explaining the repairs to the stormwater management pond that were recently made, including the removal of woody and leafy vegetation from inside the pond and along the side slopes. The City SWM facility maintenance inspector and the EPA inspection team then proceeded to inspect the inlets and banks of the pond. It was noted, during the EPA inspection team site visit that the side slopes of the pond were very steep (City SWM facility inspector stated 1:1 slope) (Photograph 5), that vegetation was not fully established on the side slopes of the pond and had resulted in bare spots (Photographs 6 and 7), that tree stumps on the side slopes of the pond had not fully been removed, algae and trash were present on the pond surface (Photographs 7 and 8), and erosion was present on the side slope in the alcove on the west side of pond (Photograph 9).

According to documentation provided, the City last conducted an inspection of the pond on March 21, 2007 (Exhibit 9, San Francisco A Condominium Association SWM Facility Inspection Checklist) and sent a Non-Compliance letter on June 1, 2007 (Exhibit 10, San Francisco A Condominium Association Non-Compliance Letter). The City's SWM facility inspector indicated that the Condominium Association responded to the items contained in the non-compliance letter and corrected the noted deficiencies; however, items of concern were noted during the EPA inspection team's site visit to the stormwater pond.

***Site: Newport News Police Headquarters (9710 Jefferson Avenue, Newport News, VA)***

The Newport News Police Headquarters building is located along Jefferson Avenue and consists of approximately five to six acres with impervious coverage over a large portion of the site. Impervious areas include two buildings, driveways, and large parking areas. The site drains to a wet stormwater pond (Photograph 10) located on the northeast side of the site which appeared to discharge to a stormwater culvert in the northeastern corner; however the drainage pattern was not confirmed (Photograph 17). The site visit was impromptu and therefore no inspection records or site plans were available for review during the site visit. The pond is considered by the City to be a commercial structural control and was identified on the City's Commercial Structural Control inspection list/inventory; however, the pond is owned and maintained as a public facility.

Upon arrival at the site, the City SWM facility maintenance inspector indicated that he was not aware if and/or when the pond had last been inspected, routine maintenance activities conducted, or the location of pond outlet. The City SWM facility maintenance inspector and the EPA inspection team proceeded to conduct a perimeter review of the pond. It was noted, during the EPA inspection team's site visit, that the side slopes of the pond were eroding (Photographs 11 through 14) and there was a significant amount of algae growth below the surface of the water (Photographs 15 and 16).

According to documentation provided, the City last conducted an inspection of the pond on December 6, 2006, and indicated that the pond was in compliance with City standards at that time. Documentation of observations during the 2006 inspection was requested by the EPA inspection team but was not provided by the City.

***Site: Windy Knolls Development (Windy Lane, Newport News, VA)***

The development consisted of luxury condominiums, parking areas (some with individual garages), a clubhouse with pool, and an on-site car wash. The Windy Knolls development held an active Land Disturbance Permit issued by the City; however, at the time of the site visit the project area appeared to be at or near stabilization. Several areas of the development were slated for future development and those areas had been stabilized. City representatives stated that the development had received a "Temporary Certificate of Occupancy" for areas of the site where construction was complete; however, erosion and sediment (E&S) inspections would continue until the permit was terminated and a final inspection had been completed. Onsite structural stormwater controls consisted of three stormwater management ponds (Photograph 27), a Filterra® stormwater treatment unit, and grassy and gravel swales (Photographs 18 and 19). The ponds, Filterra unit, and swales are considered by the City to be commercial structural controls, but were not yet identified on the City's Commercial Structural Control inspection list/inventory.

The site visit began by the City representatives explaining the layout of the site, including the presence and location of the structural stormwater controls and the areas that had recently been stabilized. The City E&S Inspectors and the EPA inspection team then proceeded to inspect the structural controls.

For the most part, stabilization was noted throughout the active portion of the site, and the installation and maintenance of the structural stormwater controls also appeared functional. However, a few minor issues were identified during the site visit.

Vegetation around the ponds was adequate, but appeared to be stressed in several areas (Photographs 20, 22, and 23); an unknown polyvinyl chloride (PVC) pipe located on the side of a building had an apparent connection to the stormwater pond (noted as a possible roof drain with cleanout) (Photographs 21 and 22); sediment noted at the pond inlet near the community car wash area (Photograph 24); a lack of controls to prevent sediment from the construction activities from entering the Filterra unit (Photograph 25); and what appears to be a retaining wall seep pipe and roof drain connected to direct water to a wetland (Photograph 26).

City representatives provided inspection reports from January 2009 and through June 2010, site plans, and a copy of the development's Structural Control Maintenance MOA (Exhibit 1, Windy Knolls Condominiums MOA) to the EPA inspection team. According to documentation provided, the City appeared to be conducting regular E&S inspections of the site pursuant to 4VAC50-30 requirements. Based upon a conversation with the City's E&S inspectors, correct operation of structural stormwater controls and permanent stabilization will be verified during a final inspection prior to the issuance of a permanent Certificate of Occupancy.

### **III.C. Requirement I.A.1.b – Unauthorized Discharges and Improper Disposal**

Part I.A.1.b of the permit contains requirements for unauthorized nonstormwater discharges and improper disposal, which the City addresses through a program herein referred to as its Dry Weather Screening Program. The City's Dry Weather Screening Program to address such discharges and applicable permit requirements are discussed below.

#### **III.C.1. Dry Weather Screening Site Identification**

The City identified 251 dry weather field screening points (FSPs) in its Part I and Part II Application. The FSPs consist solely of manholes and do not include any of the City's 569 major and minor outfalls. Additionally, the City Dry Weather Screening Inspector stated that water is present in some manholes year round due to ground water infiltration. All manholes that should be dry are included in the set of identified FSPs. City staff indicated that they were unaware how the FSPs were initially selected and whether any changes have been made to the set of FSPs since its initial selection.

City staff indicated that they use the illicit discharge management program detailed in its Part I and Part II Application as their standard operating procedure (SOP) for conducting dry weather screening inspections (Exhibit 13, Dry Weather Screening SOP). However, the City Dry Weather Screening Inspector indicated he did not follow any written dry weather screening procedures nor was he provided with or required to follow any written procedures. The inspector was trained on the City's inspection procedures on the job by the previous dry weather screening inspector.

The Part I and Part II Application does not contain requirements for the number of dry weather screening inspections that must be completed annually. It does, however, state that "starting in the second year of the permit term, up to 15 new field screening points will be evaluated per year" (Exhibit 13, Dry Weather Screening SOP). The City Dry Weather Screening Inspector stated that the set of FSPs has not been modified since he began as the inspector in 2006. Section 5.2.2 of the City's 2006 proposed MS4 Program Plan states that the City will conduct six dry weather screening inspections per year (Exhibit 14, 2006 Dry Weather Screening Program Requirements). The inspector inspected six points in 2009, and had already inspected 14 points in 2010 as of June 14, 2010. The inspector stated he had inspected a total of 150 points since 2006. The inspector stated he randomly chooses which points he inspects.



**Observation 7.      The City of Newport News staff were unaware how dry weather screening points were initially identified and whether the set of dry weather screening points had ever been updated.**

Part I.A.1.b.2 of the permit requires that priority for dry weather screening sites “shall be placed on segments of the storm sewer system which receive drainage from industrial and commercial sources”. However, City staff was unaware how the set of dry weather screening points initially identified in the Part I and Part II Application were selected. City staff was also unaware whether the set of dry weather screening points had been updated since their initial selection. Land use changes may have occurred since this time that would warrant updating the dry weather screening points. Additionally, the City Dry Weather Screening Inspector indicated that the manhole located immediately outside the industrial site “Pete’s Used Auto Parts” was not included in the set of dry weather screening points and had never been inspected. The EPA inspection team had visited Pete’s Used Auto Parts on June 14, 2010 and noted numerous locations where spills had occurred plus areas within the facility where polluted runoff could ultimately reach the City MS4. Details of the inspection of Pete’s Used Auto Parts are contained in Section III.D.2 of this report. The EPA inspection team observed the presence of many automobile repair shops in Newport News. It is unknown whether dry weather screening points are located near the automobile repair shops or other industrial sites with the potential to contribute significant pollutant loads to the MS4.

Also, the City Dry Weather Screening Inspector randomly chooses points from 251 identified dry weather screening points to inspect. In 2006, he prioritized inspections points near industrial areas but has not done so since then.

### **III.C.2. Dry Weather Screening Inspections**

Dry weather screening inspections can only be conducted after at least 48 hours have elapsed since the last rainfall. In order to complete a dry weather screening inspection, the inspector first identifies the points to inspect and obtains a map of the area near the point. The inspector brings with him a notebook, blank field screening data form (page 10-6 of Exhibit 13, Dry Weather Screening SOP), camera, manhole puller, turbidity tube, and dry weather test kit. The kit includes test for pH, ammonia, total chlorine, total copper, total phenol, and detergents.

Upon arriving at the inspection point, the City Dry Weather Screening Inspector removes the manhole cover and checks the manhole and stormwater inlets for leaves, sediment, and debris. If clogs are noted, the inspector informs the City Stormwater Operations Administrator and follows up with him at a later date to confirm that the manhole has been cleaned.

The inspector completes side one of the Field Screening Data Form and takes a photograph of every field screening point inspected. If flow is observed, the inspector describes the quantity of flow, color, odor, turbidity, and surface qualities (e.g., algae, oily sheen). If enough flow is present, the inspector takes a sample of the flow and conducts field tests according to the dry weather test kit instructions. The inspector will return in approximately 24 hours to confirm the readings. The inspector does not complete side two of the Field Screening Data Form which contains fields for manhole diagrams, flow measurements, and pipe/channel characteristics.

The inspector indicated that test kit readings greater than 0.2 ppm, particularly for detergents, typically indicate that an illicit discharge may be present and further follow up is required. In that case, the inspector immediately notifies the City Stormwater Management Division Conservator of the Peace who aids the inspector in tracking the source.

The inspector stated he can typically perform five to ten inspections in one day.

**Observation 8. The City of Newport News does not use any formal training, standard operating procedures, or manuals for illicit discharge detection and elimination.**

The City does not use any formal training, standard operating procedures, or manuals for illicit discharge detection and elimination for complying with Part I.A.1.b of the permit

The City Stormwater Management Division Conservator of the Peace indicated he is a first responder training, has been trained in constitutional law, and has learned through experience. When asked whether he received training or manuals provided by the City, the City Dry Weather Screening Inspector indicated he follows the instructions provided in the chemical test kit in order to test dry weather flow, and that he was trained in school and on the job. While other City staff indicated that basic procedures outlined in Section 10 of the Part I Application served as their standard operating procedures, the City Dry Weather Screening Inspector and City Stormwater Management Division Conservator of the Peace do not follow the outlined procedures and did not state that they were instructed to follow the procedures

**III.C.3. Dry Weather Screening Follow Up and Enforcement**

After the Conservator of the Peace arrives at the screening point, both City staff track the source of the potential illicit discharge by inspecting upstream manholes or other storm sewer inlets. The inspector also returns to the screening point to collect a sample for further laboratory analysis. The inspector indicated he has only called the Conservator of the Peace once since 2006 in regards to a high field test reading at FSP 245. The EPA inspection team requested documentation of this inspection and follow up activity from the City Dry Weather Screening Inspector who then provided the 2007 and 2008 field screening data forms for FSP 245 (Exhibit 15, FSP 245 Field Screening Data Forms).

Review of the 2007 and 2008 field screening data forms for FSP 245 indicated an elevated detergent level (0.75 ppm) on October 10, 2008. The inspector stated that the investigation found that a diesel spill was the source of the elevated detergent level and follow up activity records would be kept by the Conservator of the Peace. The EPA inspection team formally requested documentation of the actions taken to identify the source of the diesel spill near FSP 245 (Item 4 in Exhibit 16, Team 1 Email Records Request) and any follow up actions regarding the spill cleanup. All records provided by the City with regard to FSP 245 are in response to a 2006 spill (Exhibit 17, FSP 245 Investigation). The documentation states a follow up inspection on February 15, 2006 showed that the spill area had been cleaned up. The documentation also indicated fuel was still present at FSP 245 on March 20, 2006 and that the City continues to monitor the site. It is unclear whether any follow up action resulted from the high detergents reading in 2008.

Also, the field screening data form for the inspection of FSP 127 on March 1, 2010 indicates a detergent reading of 1.5 ppm (Exhibit 18, FSP 127 Field Screening Data Form). While this reading is greater than the 0.2 ppm follow up threshold, the inspector did not contact the Conservator of the Peace regarding the elevated detergent value and the documentation was not sufficient to determine if the inspector investigated the site further. The inspector did, however, return to the site on March 2, 2010 and performed additional field tests on the flow in FSP 127. The detergents reading on March 2, 2010 was 0 ppm.

The Conservator of the Peace stated his role was to determine whether there is a willful criminal or civil violation. He is typically called by the Fire Department (approximately one to two times a month) in response to spills and leaks but may be called by the City Dry Weather Screening Inspector as well. If the potential illicit discharge is traced back to a private site, the Conservator of the Peace asks permission to enter the site and speaks with the person in charge. He indicates to the site personnel that the City has traced a potential illicit discharge back to the site and asks whether a spill had occurred and whether it had been reported. The Conservator of the Peace examines the site primarily for spills, free product, open buckets, spill absorbing material, sheens, and smells.

Additionally, he asks about the products used on site to determine whether they match the field test results and also collects a sample of spills or discharges on site to compare to the field screening measurements taken at the FSP. If spills or releases are identified, the Conservator of the Peace requires immediate cleanup and then returns to the site in three days to one week to confirm that clean up was performed. For any major issues, the Conservator of the Peace contacts the Virginia Department of Environmental Quality. The Conservator of the Peace keeps any records in a personal notebook and on his computer, however, he indicated he does not always keep records for all inspections.

**Observation 9.      The City of Newport News is not completing investigations of all potential illicit discharges identified through dry weather screening and confirming cessation of identified illicit discharges as required by Part I.A.1.b.(3) of the permit.**

The City Dry Weather Screening Inspector stated that detergents readings greater than 0.2 ppm typically trigger further investigation and he has only contacted the Conservator of the Peace once for follow up investigation regarding a high detergents reading. The follow up occurred in 2006 due to a diesel fuel spill at FSP 245. However, while the City investigated the source of the illicit discharge, the City did not confirm that the illicit discharge had ceased. A follow up inspection performed on February 15, 2006 confirmed that the spill had been cleaned up; however, an inspection of FSP 245 on March 20, 2006 showed fuel was still present in the manhole. No further documentation was provided on whether further follow up on the source of the fuel occurred.

The 2008 field screening data form for FSP 245 showed a detergents reading of 0.75 ppm. It is unclear whether any follow up action resulted from this reading. In addition to the repeated high detergents readings at FSP 245, a field screening data form for FSP 127 indicated a detergents reading above 0.2 ppm in March 2010. The City Dry Weather Screening Inspector did not contact the Conservator of the Peace regarding the elevated detergent value and the documentation was not sufficient to determine if the inspector investigated the site further.

**III.D.      Requirement I.A.1.c – Runoff from Industrial and Commercial Facilities**

Part I.A.1.c of the permit contains requirements to monitor and control pollutants in stormwater discharges from certain industrial and commercial facilities, which the City addresses through a program herein referred to as its Industrial Inspection Program. The City's Industrial Inspection Program and applicable permit requirements are discussed below.

**III.D.1. Industrial Inspection Program**

The City Department of Engineering staff stated that they did not have the authority to enter and inspect industrial and commercial facilities and therefore they rely on the Fire Department to conduct industrial and commercial facility stormwater inspections. The Fire Department's authority to conduct inspections is derived from the 2006 International Fire Code and the 2006 Virginia Statewide Fire Prevention Code (SFPC). The SFPC does not specifically address stormwater. Instead it includes requirements regarding the storage of combustible and hazardous materials. According to the Fire Department's Inspection Report Form, the City has broadened this requirement to include "general housekeeping outside of building".

The Fire Department has six inspectors which inspect 8,000 to 10,000 parcels annually. The Fire Department representatives indicated that inspections are performed from a fire code compliance perspective, however, if a violation is identified (e.g., if an illicit discharge is observed entering a drain), the fire inspector will investigate and notify the Department of Engineering and the Virginia Department of Environmental Quality when necessary. The Fire Department found no environmental issues during its routine inspections in 2009 and only one issue as of June 14, 2010.

**Observation 10. The City of Newport News has not identified new or previously unidentified facilities with the potential to impact stormwater.**

Part I.A.1.c. of the permit requires the permittee to have “a program to monitor and control pollutants in storm water discharges from municipal landfills, hazardous waste treatment, storage and disposal facilities, industrial facilities subject to Section 313 of the Emergency Planning and Community Right to Know Act, and facilities determined by the permittee to be contributing substantial pollutant loadings.” Additionally, Part I.A.1.c(1) requires the permittee to “inspect any new or previously unidentified facilities (as described above).” The City’s MS4 Program Plan, developed in 2006, contains a list of Section 313 facilities last updated in 2006 and VPDES-permitted industrial dischargers. It is unclear whether the latter has been updated since 2006. No hazardous waste treatment, storage and disposal facilities, or other facilities contributing substantial pollutant loadings were identified. While City staff indicated that the Fire Department inspected all new facilities, the EPA inspection team observed that stormwater issues were not a focus of the inspections and the City is not working with the Fire Department to help identify sites with potential stormwater issues. The Fire Department has a prioritization scheme for its inspections; however, stormwater issues are not considered in the prioritization process.

### **III.D.2. Industrial Facility Site Visits**

On June 14, 2010, the EPA inspection team witnessed a series of industrial facility inspections performed by the City Assistant Fire Marshal. Summary observations pertaining to one of the sites are presented below.

***Site: Pete’s Used Auto Parts – 10165 Jefferson Ave, Newport News, VA***

Pete’s Used Auto Parts primarily receives and stores disabled vehicles and vehicle parts. The facility includes a vehicle maintenance garage, located indoors, and a vehicle storage area, scrap metal area, waste oil area, parts area, and a wash rack, all located outdoors. All stormwater on site drains to an oil and water separator located near the wash rack. After the water passes through the oil and water separator, it flows to the front of the facility and enters the City MS4 at Jefferson Avenue. The facility has a monitoring point for the discharge near the entrance of the site and submits discharge monitoring reports to the City and the Virginia Department of Environmental Quality.

The last routine inspection at the facility was conducted in March 2010 and no stormwater-related issues were noted. On June 14, 2010, the City Assistant Fire Marshal began the inspection in the indoor garage, continued to the waste oil area, vehicle storage area, scrap metal and parts areas, and finally the wash rack. The EPA inspection team made the following observations during the inspection:

- Debris, rusted metal, broken glass, and trash were strewn about the site (Photographs 28 through 33). Uncovered trash cans and dumpsters containing scrap metal were present around the site (Photographs 34 and 35).
- Used oil drying material had not yet been cleaned up at multiple locations around the facility (Photographs 28, 36 through 39). Oil staining was also present around the facility (Photographs 39 through 43).
- Blue-green staining, indicating a spill, was located near the waste oil area (Photograph 44).

- Multiple drums (including open drums) and buckets containing product or other liquid materials were located around the facility (Photographs 38, 45 through 48). Some drums and buckets were located under a roofed area; however, many were not. One drum, which was not located under a roofed area was actively leaking oil. Oil could be seen on top of the drum as well as on the grass and dirt area next to the drum (Photograph 49). Oily staining was present on the side of the drum (Photograph 50). Additionally, secondary containment was not present around the drums or buckets. Most drums were not labeled with their contents.
- Oil staining and spillage had occurred on and around two large used oil tanks and their secondary containment (Photographs 51 through 53). The tanks were located outside, but under a roofed area.
- An open dump truck containing trash was present on site (Photograph 54). The EPA inspection team observed facility staff throwing trash into the dump truck.
- Multiple engines were located on the ground around the wash rack area. Oil staining was present around the engines (Photographs 39 and 43).
- An oil-water separator was present at the facility. Discharges from the oil water separator enter the Newport News MS4.

The City Assistant Fire Marshal's inspection report noted under Special Condition 42 (General housekeeping outside of building shall be maintained) that used oil in drums should be placed in the large outside tank (Exhibit 19, Industrial Inspection Report for Pete's Used Auto Parts). No other environmental issues were noted specifically.

After touring the facility, the EPA inspection team reviewed the facility's stormwater pollution prevention plan (SWPPP) and discharge monitoring reports. The City of Newport News staff did not ask to view the SWPPP nor did they accompany the EPA inspection team to view it.

**Observation 11. The City of Newport News has not established the authority to conduct industrial and commercial inspections for stormwater purposes**

The City has not established the authority to conduct industrial and commercial inspections for stormwater purposes, and thereby control discharges to and from the MS4 as required by Part I.B.5 of the permit. Instead, City staff stated that the Fire Department includes stormwater as a component of its fire inspection. City staff indicated that the Fire Department conducts inspections of all industrial and commercial facilities annually; however, the EPA inspection team observed that stormwater issues are not the focus of the inspections. A Fire inspector indicated that City Stormwater Management Division staff does not participate in Fire Department inspections of any facilities. The Fire Department's inspection reports do not include a section devoted to stormwater issues (Exhibit 19, Industrial Inspection Report for Pete's Used Auto Parts). Instead the inspectors use "Special Condition 42. General housekeeping outside the building shall be maintained" to identify stormwater issues. Fire Department staff indicated "Pete's Used Auto Parts" had been inspected in March 2010 and no problems were found. However, the EPA inspection team shadowed City Assistant Fire Marshal's inspection of "Pete's Used Auto Parts" on June 14, 2010 and numerous stormwater issues were noted, including: oil and antifreeze staining around the property; uncovered buckets and drums containing paint and oil which also lacked secondary containment; an actively leaking oil drum; numerous unlabeled tanks, buckets and drums located throughout the property; an open dump truck containing trash, broken glass, and debris around the property; engines leaking oil onto the ground outside; and oil drying material which had not been cleaned up. The City Assistant Fire Marshal's report from June 14, 2010 noted under Special Condition 42 that used oil in drums should be placed in the large outside tank. No other environmental issues were noted specifically.

Additionally, the Fire Department found no environmental issues during its routine inspections in 2009. Only one issue had been found in 2010 as of June 14, 2010. The Fire Department provided a list of nine environmental cases from 2009 all of which were the result of environmental complaints.

### **III.D.3. City-owned Industrial Facilities**

The City-owned industrial facilities are located at a municipal yard. On June 14, 2010, the EPA inspection team visited three of the industrial areas on the yard: the fleet maintenance garage, the traffic operations facility, and the stockpile area. The municipal facilities are covered under an environmental management system. Portions of the yard drain to the City MS4 while other portions drain directly to surface water.

#### ***Site: City Fleet Maintenance Garage***

The City Fleet Maintenance Garage is responsible for maintenance of City vehicles including police cars, dump trucks, and others. In addition to the indoor garage, a wash rack is present on site. Two large tar tanks are also present outside and managed by an outside operator. The EPA inspection team made the following observations during the site visit:

- A truck leaking oil was parked near a concrete drainage ditch (Photograph 55). Oil staining could be seen at the entrance to the ditch (Photograph 56).
- Oil staining was present around the facility (Photographs 57 through 59).
- Rusty metal was located around the facility (Photographs 60 through 62).
- An uncovered dumpster was present on site (Photograph 63).

#### ***Site: City Traffic Operations Facility***

The EPA inspection team toured the outside of the City traffic operations facility. The facility uses and stores paint and stores traffic control equipment (e.g., traffic lights) on site. The facility was separated from surface water by a wire fence (lining the back of the municipal yard) and vegetated area. The EPA inspection team made the following observations during the site visit:

- Metal parts were scattered around the back of the facility (Photographs 64 and 65).
- An empty open paint drum, coated on the inside with paint was lying on its side outside (Photograph 66).
- A rusty spray paint can was located outside (Photograph 67).
- Evidence of paint spills and paint spray were seen on vegetation and paved areas around the facility (Photographs 68 through 72). Paint from a hose placed on a curb had spilled outside the curb (Photographs 73 and 74). Paint spray was also present on vegetation outside of the wire fence behind the facility (Photograph 75).

The EPA inspection team also visited a storm drain and outfall between the traffic operations facility and the salt storage area. Turbid, brown water covered in oily film and deposits was present in the storm drain (Photograph 76). This storm drain discharges to a small stream (surface water) behind the traffic operations facility. The water in the storm drain inlet was orange and brown in color and was covered in an oily film. Additionally, an oily froth was present on the water near the outfall to the small stream (Photographs 77 and 78).

#### ***Site: City Stockpile Area***

The City stockpile area stores dirt, soil, sand, and gravel. The dirt stockpile was surrounded in back by silt fence while the soil and gravel piles, located near the wire fence, were lined by concrete barricades. Silt fence was present between the concrete barricades and the wire fence. The EPA inspection team made the following observations during the site visit:

- Gaps were present between the concrete barricades. In one case, gravel had spilled through and accumulated behind the barricades (Photograph 79).

- An open dumpster containing trash was present on site (Photograph 80).
- Trash was strewn about the site (Photograph 81). Piles of trash were located behind the barricades (Photograph 82).
- An oily sheen was present on mud behind the barricades (Photograph 83).

**Observation 12. The City of Newport News is not prohibiting non-stormwater discharges originating from the City municipal yard, from entering the MS4 as required by Part I.B.4 of the permit.**

During a site visit to the City's municipal yard, the EPA inspection team observed numerous stormwater issues, including: a truck leaking oil near a concrete drainage ditch at the vehicle maintenance area; paint spills and spray at the traffic operations facility and surrounding vegetation; a floating oily substance on the turbid water present in the stormwater inlet located between the traffic operations facility and the stockpile area; and froth and turbid orange water at the outfall located at the edge of the municipal yard.

### **III.E. Requirement I.A.1.d – Runoff from Construction Sites**

Part I.A.1.d of the Permit addresses requirements for the structural and source controls program for construction sites. Within this program area, the inspection was focused on inspections and site operator training. The City's E&S Control Program (E&S Program) is implemented by the Department of Engineering's Construction Inspection Division. The EPA inspection team's observations related to this section of the permit are discussed below.

The City of Newport News Department of Construction Inspection Division has two full time inspectors responsible for E&S inspections of land disturbing activities. The Department of Public Works inspects capital improvement projects. Section 6.3.1 of the MS4 Program Plan discusses the requirements for inspections and enforcement.

Each active construction site is inspected every two weeks and within 48 hours of a runoff producing storm event (which the City indicated was typically 0.5 inches of rainfall) until construction is substantially complete, unless an Alternative Inspection Program (AIP) was approved for the site. After substantial completion of construction, the owner obtains the occupancy permit and terminates the land disturbance permit. At the time of the EPA inspection, the City had 81 open land disturbance permits. The City's tracking database provides the inspectors with a list of sites that are in need of inspection.

The Construction Inspection Division E&S inspectors are equipped with laptop computers to electronically track inspections and enforcement actions. The database includes a map, the site location, the zoning classification of the site, as well as the required inspection frequency. The inspectors complete an electronic inspection report to document inspections. Violations are also tracked through the database. The database is available to City employees through an internal computer network.

**Observation 13. The City of Newport News did not ensure E&S inspections are conducted at the required frequency.**

Part I.B.6 of the permit requires that the City of Newport News "provide adequate finances, staff, equipment, and support capabilities to implement all parts of the Storm Water Management Program required by Part I.A of this permit." 4VAC5030 requires that all approved local programs "provide for an inspection during or immediately following initial installation of erosion and sediment controls, at least once in every two-week period, within 48 hours following any runoff producing storm event, and at the completion of the project prior to the release of any performance bonds; or establish an alternative inspection program which ensures compliance with the approved erosion and sediment control plan.

Any alternative inspection program shall be: (a) Approved by the board prior to implementation; (b) Established in writing; (c) Based on a system of priorities that, at a minimum, address the amount of disturbed project area, site conditions and stage of construction; and (d) Documented by inspection records.”

A City E&S inspector stated that the City is unable to complete all biweekly inspections and post-rain event inspections as required by 4VAC50-30 requirements. The City has two E&S inspectors who spend approximately 75-85 percent of their time conducting E&S inspections. City representatives stated that a certified civil site inspector assists when available, but a review of all 2009 inspection records indicates that the civil site inspector did not conduct inspections during that period. A City representative stated that the City had 12 E&S inspectors approximately five years prior to conduct inspections. This indicates a significant reduction in City staff that had been tasked with conducting E&S inspections.

At the time of the EPA inspection, there were 81 open Land Disturbance Permits issued by the City (Exhibit 20, Open Land Disturbance Permits). (Exhibit 21, E&S Inspection Records). It was expected that all 81 sites would have been inspected at least twice during this period resulting in a minimum of 162 inspections if no qualifying rain events were experienced. However, the City provided records for only 141 inspections during that period.

**Observation 14. The City’s E&S inspectors do not assess non-sediment, construction site pollutant sources.**

Permit Part I.A.1.d(2) states that the City shall “...continue implementation and maintenance of structural and nonstructural best management practices to reduce pollutants in storm water runoff from construction sites.”

In contrast to this requirement, the City E&S site plan reviewers and inspectors have not been tasked with assessing construction site pollutants other than sediment. The City has based their E&S Inspection Program on the City’s Stormwater Management Ordinance under authority granted by the Virginia Erosion and Sediment Control Law. The Virginia Erosion and Sediment Control Regulations (VESCR) (4VAC50-30) have been promulgated to administer, implement, and enforce the Virginia Erosion and Sediment Control Law (§ 10.1-560 et seq. of the Virginia Code). However, the Virginia Erosion and Sediment Control Regulations pertain only to “erosion and sediment control concerns,” and mandate the adoption of erosion and sediment control programs by localities, which dictates the scope of the local program (Exhibit 22, VESCR).

Chapter 35 of the City code states that “the director of engineering shall administer and enforce the provisions of this chapter, which is authorized by Title 10.1, Chapter 5, Article 4 (Section 10.1-560 et seq.) of the Code of Virginia, (1950, as amended).” Accordingly, the City’s inspection checklist does not include a non-sediment component (Exhibit 23, E&S Inspection Checklist). Through discussions with City site plan reviewers and E&S inspectors, it was determined that site plans and physical site conditions are only reviewed for E&S related information.

**Observation 15. The City did not have a training program to educate construction site operators.**

Permit Part I.A.1.d(2) requires that “the permittee shall continue implementation of the education and training program for construction site operators.” Further, the City’s comprehensive plan, Framework for the Future 2030 (November 6, 2008), Section 12, Goal 3, Implementation 3.4.2 states that the City shall “develop a local education program with the Peninsula Homebuilder Association, for the City’s land development ordinances to include the erosion and sedimentation control ordinance.”



The City's NPDES Stormwater Part II Application, Section 12.3 indicates that "the City of Newport News will evaluate the feasibility of sponsoring short Erosion and Sedimentation training sessions for contractors and others, using video, slides, lectures and other media. The training sessions will be held periodically to acquaint contractors with good erosion and sedimentation control practices

The City does not have a training program to educate construction site operators and has not worked with the Peninsula Homebuilder Association to develop a local education program. Additionally, the City does not publicize training conducted by outside organizations or agencies or publicize the State's certification programs. It should be further noted that, Section 6.0 (Construction Site Runoff Control) of the City's MS4 Program Plan does not include information regarding education of construction site operators.